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Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

MORETON ROLLESTON, JR.,

Petitioner,

v.

ST. PAUL FIRE & MARINE INSURANCE CO.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1.

Does the granting of a Motion for Summary Judgment violate the right to a jury trial guaranteed by Amendment VII to the Constitution of the United States?

2.

Did the summary judgment in this case violate the principles laid down in *Grupo Mexicano deDesarrallo, S.A., et al. v. Alliance Fund, Inc., et al.*?

3.

Did the trial court's judgment constitute a violation of the Commerce Clause of The United States Constitution, Article One, Section 8?

LIST OF PARTIES

1. Moreton Rolleston, Jr.
2. St. Paul Fire and Marine Insurance Company.

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TABLE OF AUTHORITIES

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Grupo Mexicano de Desarrillo, S.A., et al. vs. Alliance Bond, Inc., 143 F.3d 688 2

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PETITION FOR A WRIT OF CERTIORARI

The trial court granted a motion for summary judgment in favor of the Respondent. The Supreme Court of Georgia affirmed the trial court's ruling and denied a Motion for Reconsideration.

The jurisdiction of this Court to review the judgment of the Supreme Court of Georgia is invoked under 28 U.S.C. Paragraph 1257.

Grounds for jurisdiction is the violation of Amendments VII to the Constitution ofthe United States and the violation of the Commerce Clause of the United States Constitution.

STATEMENT OF CASE

FACTS RE: FIRST QUESTION

The trial court ruled on St. Paul's motion for partial summary judgment and granted St. Paul's motion for interlocutory injunction, even though St. Paul never introduced any evidence to support their claim that St. Paul had issued an appeal bond. There was no evidence, no witness, no affidavit, no deposition. There was no hearing.

The ruling on this Summary Judgment deprived Defendant below (Petitioner) of his right to a trial by a jury and thus violated Amendment VII to the Constitution of the United States.

This presents a serious and fundamental legal question. The Federal Rules and the Rules of Procedure in Georgia and, most likely, the rules in every state provide for summary judgments. All of such rules violate the Constitution of the United States.

STATEMENT OF CASE

FACTS RE: SECOND QUESTION

St. Paul's complaint sought a judgment against property of Moreton Rolleston, Jr., Moreton Rolleston, Jr. Living Trust and Moreton Rolleston, Jr. as Trustee and Beneficiary of the Trust.

The lower court granted the Motion to Dismiss filed by the Trust and the Trustee.

The lower court granted St. Paul's Motion for Summary Judgment against Rolleston and property that he had previously deeded to the Trust on February 27, 1995. The trial court had previously held as follows:

> "Transfer from Moreton Rolleston, Jr. to Moreton Rolleston, Jr. Living Trust was void as to claims of the Estate only".

Thus the transfer was valid as to all others, including St. Paul. St. Paul contends that Rolleston did not have the right to transfer all of his property to the Trust. The case of *Grupo Mexicano deDesarrollo, S.A., et al. v. Alliance Bond Fund, Inc., et al.*, 143 F.3d 688, Grupo held:

> "The requirement that the creditor obtain a prior judgment is a fundamental protection in debtor-creditor law – rendered all the more important in our federal system by the debtor's right to a jury trial on the legal claim."

St. Paul (the plaintiff-creditor) did not have judgment prior to filing their complaint.

STATEMENT OF CASE

FACTS RE: THIRD QUESTION

St. Paul was not a judgment creditor, as required by GRUPO.

ARGUMENT

FIRST QUESTION

The order of the trial judge granting a motion for summary judgment constitutes a trial by a judge.

The U.S. Constitution provides for a trial by jury. Therefore, any summary judgment violates the U.S. Constitution.

ARGUMENT

SECOND QUESTION

St. Paul was awarded a summary judgment against Petitioner. St. Paul presented no evidence. There was no hearing on the motion for summary judgment. St. Paul sought a judgment against Petitioner's property which the trial court had held in another lawsuit was owned by the Trustee and not by Petitioner herein. GRUPO held that a creditor must first obtain a judgment before the creditor has any claim to property of the opposing party. St. Paul needed a jury verdict and then judgment of the trial court before St. Paul had any claim against Petitioner or his property.

ARGUMENT

THIRD QUESTION

GRUPO also held that a creditor without a judgment could not interfere with the sale of a debtor's property because such interference would violate the Commerce Clause of the U.S. Constitution.

St. Paul did not obtain a judgment prior to the order of the trial court in this case.

The lower court's judgment constitutes a violation of the Commerce Clause of the U.S. Constitution, Article 1, Section 8, according to GRUPO.

CONCLUSION

Brevity is precious. The lower court erred. The granting of a motion for summary judgment violated the constitutional right to a trial by jury and the Commerce Clause of the U.S. Constitution.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF GEORGIA

Decided: Nov. 30 2001

S01A1709. ROLLESTON, JR. v. ST. PAUL FIRE & MARINE INSURANCE CO.

PER CURIAM.

Judgment affirmed without opinion pursuant to Rule 59, and pursuant to Rule 8, the Court imposes a penalty of $1,000.00 against Moreton Rolleston, Jr., individually, for filing a frivolous appeal.

All the Justices concur.